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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1995

ANJELICA NURSERIES, INC. ET. AL.,
PETITIONERS,
VS.
RONI F. CORADO-CERON,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Section 9-101(b)(2) of the Labor and Employment Article of the Maryland Code violate the Contract Clause of Article I, §10 of the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution, as made applicable to the States under the Fourteenth Amendment, insofar as Section 9-101(b)(2) compels an employer to compensate an employee for injuries sustained at the jobsite where such injuries are shown to have been actuated by a third person acting for personal reasons, unrelated to the employee's employment, with the intent of harming the employee?

PARTIES

The parties are Angelica Nurseries, Inc. and Florists' Mutual Insurance Company, Petitioners, and Roni F. Corado-Ceron, Respondent.

Pursuant to Rule 29.6 of the Rules of the Supreme Court, Petitioners state that Florists' Mutual Insurance Company is the parent of Florists' Life Insurance Company, Florists' Insurance Company and Florists' Insurance Service, Inc., and that Florists' Insurance Service, Inc. has two subsidiaries: Florists' Insurance Service, Inc. of Massachusetts, and Florists' Insurance Service, Inc. of Indiana.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Petitioners respectfully submit that a writ of certiorari should issue to review the decision of the Court of Special Appeals of Maryland in this case.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland is unreported. A copy of the opinion is reproduced in the Appendix hereto at 1-6. The order of the Circuit Court for Kent County, Maryland, is unreported. A copy of the order is reproduced in the Appendix at 7. A copy of the underlying order of the Maryland Workers Compensation Commission is reproduced in the Appendix at 8-9.

JURISDICTION

The opinion of the Court of Special Appeals of Maryland was filed on January 31, 1996. A timely petition for certiorari was filed to the Maryland Court of Appeals. This petition was denied on June 6, 1996. The denial of certiorari by the Maryland Court of Appeals is unreported. A copy of the denial is reproduced in the Appendix at 10. This petition is being timely filed within 90 days of that denial. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 and Rule 13.1 of the Rules of the Supreme Court of the United States.

STATUTORY PROVISIONS INVOLVED

This case involves Section 9-101(b)(2) of the Labor and Employment Article of the Maryland Code. (A copy of the statute is reproduced in the Appendix at 11).

STATEMENT OF THE CASE

Factual Background. On the morning of August 23, 1993, Ramon Rodriguez-Quezada ("Ramon") approached the residence of Alma Lorane Corado-Ceron ("Alma"). Ramon had been romantically involved with Alma, the sister of the Respondent in this case. At approximately 9:00 a.m. that morning, Ramon confronted Alma at the doorway of her house. He had a rifle with him. Ramon threatened Alma and threatened to shoot the members of her family. Ramon fired several shots at Alma from outside the house but did not injure her.

Roni Corado-Ceron, the Respondent in this case, was aware of his sister's relationship with Ramon and had repeatedly recommended to her that she break up with him. Later that same day, Ramon drove to the field owned by Angelica Nurseries, Inc. where the Respondent worked as a field laborer. Ramon had previously worked for Angelica Nurseries but had been fired approximately one year before. At the time Ramon approached, the Respondent was working with his brother, Carlos, and a supervisor, Tom Larrimore. Each was performing his duties of employment with Angelica Nurseries.

Ramon, while still seated in the driver's seat of his truck, waved for the workers to approach his truck. When

the Respondent was close to Ramon's truck, Ramon fired several shots with a rifle from the front seat of his truck and then drove off, leaving the Respondent laying in the field. Later that day, while being transported to the District Court Commissioner's office, Ramon Rodriguez admitted to the arresting officer, Deputy Jon P. Longest, that he (Ramon) was extremely angry and went crazy because his girlfriend, Corado-Ceron's sister, Alma, was having an affair. The record is barren of any evidence to support a conclusion that the shooting resulted because of a condition of the Respondent's employment.

The Respondent filed a claim for workers' compensation benefits alleging that he had sustained an accidental injury arising out of and in the course of his employment with Angelica Nurseries, Inc. on or about August 23, 1993.

The Order of the Workers Compensation Commission. A hearing was held before the Maryland Workers' Compensation Commission on May 24, 1994 on the issues of whether the employee sustained an accidental personal injury arising out of and in the course of this employment together with whether the disability of the employee was the result of the accidental injury arising out of and in the course of this employment.

In an order dated June 17, 1994, the Maryland Workers' Compensation Commission (the "Commission") held that Roni Corado-Ceron, the Respondent in this case, had sustained an accidental injury arising out of and in the course of his employment with Angelica Nurseries, Inc. (one of the Petitioners in this case) when, on August 23,

1993, Corado-Ceron was gunned down at the field where he was working by the jealous former boyfriend of Corado-Ceron's sister. In consequence, the Commission awarded Corado-Ceron temporary total disability benefits together with payment of medical expenses.

The Order of the Circuit Court for Kent County, Maryland. Subsequently, the Petitioners appealed to the Circuit Court for Kent County, and among other matters challenged the constitutionality of Section 9-101(b)(2) of the Labor and Employment Article of the Maryland Code. Thereafter, both the Petitioners and then the Respondent filed cross-motions for summary judgment on the issue of accidental injury arising out of and in the course of employment. The Circuit Court granted the Respondent's cross-motion for summary judgment and denied the Petitioners's cross-motion for summary judgment.

Appeal to the Court of Special Appeals of Maryland and to the Court of Appeals of Maryland. The Petitioners subsequently timely filed an appeal with the Court of Special Appeals of Maryland, which court affirmed the judgment of the Circuit Court for Kent County. In its affirmance, the Court of Special Appeals acknowledged, but dismissed, the constitutional issues raised in the lower court. (See pertinent excerpts of the court's opinion in the Appendix at 2-4.) Thereafter, the Petitioners timely filed a petition for a writ of certiorari with the Court of Appeals of Maryland--the highest court in the State of Maryland, which petition was denied on June 6, 1996. In this petition, petitioners again challenged the constitutionality of Section 9-101(b)(2) of the Labor

and Employment Article of the Maryland Code. (See excerpts from petition in the Appendix at 12-21.)

REASONS FOR GRANTING THE WRIT

This case involves Section 9-101(b)(2) of the Labor and Employment Article of the Maryland Code (hereinafter the "Statute," the "Maryland Statute," or "Section 9-101(b)(2)"). Section 9-101(b)(2) defines a compensable accidental injury as one that either "arises out of and in the course of employment" (the "arising out of and in the course of clause") or is "caused by a willful or negligent act of a third person directed against a covered employee in the course of employment of the covered employee" (the "willful injury clause"). Because of the dichotomy set forth in the Statute, the implication of the "willful injury clause" is that an injury willfully inflicted by a third person will be compensable even though the circumstances giving rise to the injury had nothing to do with the injured employee's employment and even though the injury may have been inflicted for totally personal reasons.[1]

Thus, one can envision the circumstance where the "willful injury clause" will permit compensation where an employee has been stalked by a jealous lover and is killed on the jobsite by the jealous lover two minutes after arriving for work. Or, as in the case at bar, one can

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1. Maryland case law has interpreted the "willful injury clause" in exactly this fashion. *See, Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 348 A.2d 748 (1978); and *Giant Food v. Gooch*, 245 Md. 160, 225 A.2d. 431 (1967).

envision the circumstance where compensation benefits will be forthcoming under the "willful injury clause" where an incensed former lover, having unsuccessfully attempted to kill his former girlfriend, methodically seeks out his girlfriend's brother (who had argued in favor of the couple breaking up), finds him at work in an agricultural field, summons him to the edge of the field and shoots him at point blank range rendering him a paraplegic. In both of these cases, it is difficult to draw any kind of rational connection or relationship between the intentional, jealousy-based act and any element of the decedent's employment. Yet, in each case, the "willful injury clause" places the burden of the injury or death on the employer (and, by inference, the customers of the employer).

By contrast, had either of the assaults occurred one block from the decedent's workplace or had they been inflicted several minutes before the decedent's scheduled arrival time for work, there would be no question but that the burden of the decedent's injuries would reside with the injured person or, where death occurred, with the survivors[2] of the assaulted person. Further, where such an assault left the injured person unable to take care of himself or herself, society as a whole would assume the burden of the terrible acts committed by the jealousy-crazed third party.

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2. Of course, the decedent's estate would be entitled to pursue all available remedies against the third party assailant.

Because there is no rational distinction between who should bear the responsibility when an employee is intentionally gunned down for personal reasons one block from his place of employment and who should bear such responsibility when, as in this case, the employee is summoned to the outer perimeters of his place of work and then gunned down, also for personal reasons, the Maryland Statute which places the burden of the former on the employee and the burden of the latter on the employer bears no reasonable relationship to a cognizable state objective, exacts an unreasonable taking and improperly impairs the underlying contractual relationship between employer and employee. As such, the statute violates the Contract Clause of Article I, §10 of the Constitution, and the Deprivation and Takings Clauses of the Fifth Amendment to the Constitution, as made applicable to the States under the Fourteenth Amendment to the Constitution. To remedy these constitutional wrongs, further review by this court is plainly required.

I. The "Willful injury Clause' is an Arbitrary and Unreasonable Exercise of the Legislative Police Power of the State of Maryland, and, in Consequence, Gives Rise To a Deprivation of Property in Violation of Due Process.

There can be no question but that the police power authority of the State of Maryland serves as the constitutional lynchpin for the workers compensation legislation now before this court: See *Mazor v. State Department of* Correction, 379 Md. 355, 369 A. 2d 82, 89 (1977) where the court framed as follows the police power derivation of Statute: "Because the workmen's

compensation laws protect workers and their families from the hardships inflicted by work-related injuries, they represent an exercise of the police power." It is also a well established constitutional maxim that the police power of a state may be exercised in the form of regulatory legislation only where the legislation bears a real and substantial relationship to the state objectives being sought. See *General Motors Corporation v. Romein*, 503 U.S. 181 (1992).

In *General Motors Corporation v. Romein*, this court evaluated a 1987 statute enacted by the Michigan Legislature which had the effect of requiring General Motors Corporation and Ford Motor Company to repay workers' compensation benefits GM and Ford had withheld in reliance on an earlier 1981 Michigan workers' compensation statute. GM and Ford challenged the provision of the statute mandating these retroactive payments on the ground that it violated the Contract Clause and the Due Process Clause of the Constitution. In evaluating the question of due process in the context of state workers compensation legislation, this court stated that retrospective challenges to such a statute must be evaluated in the same manner as prospective statutes, i.e., there must be a rational basis between the legislation and its intended effect:

> [t]he retroactive aspects of [economic] legislation, as well as the prospective aspects, must meet the test of due process: a legitimate legislative purpose furthered by rational means. Pension Benefit Guaranty Corporation v. R.A. Gray & Co., 467 U.S. 717, 730, 104 S.Ct. 2709, 2718 . . . (1984).

503 U.S. 191. See also *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988) ("statute is upheld if it bears a rational relation to a legitimate government objective"); and *State of Minnesota v. Clover Leaf Creamery Company et. al.*, 449 U.S. 456, 470 (note 12) (1981) (rational relationship underlying equal protection analysis also applied to substantive due process argument).

This rational basis principle has also been well recognized by the Courts of Maryland. See, e.g., *West Chester West No. 2 Ltd. Part. v. Montgomery Cty.*, 276 Md. 448, 348 A. 2d 856 (1975) where the court stated the following:

> This Court has pointed out on numerous occasions that the test for constitutionality of regulatory legislation under the Due Process Clause is whether the statute, as an exercise of the state's police power, 'bear(s) a real and substantial relation to the public health, morals, safety and welfare of the citizens of the State.' Steuart Petroleum Company v. Board of County Commissioners of St. Mary's County, Md., 347 A.2d 854 (1975) (No. 41, September Term, 1975, decided December 3, 1975); Bowie Inn v. City of Bowie, 274 Md. 230, 236, 335 A.2d 679, 683 (1975) . . . .

Further, the courts of Maryland have recognized that where the legislation is shown to be arbitrary, oppressive or unreasonable, the legislation will be struck down. See, e.g., *West Chester West No. 2 Ltd. Part. v. Montgomery Cty, 276 Md. 448.* 348 A. 2d at 861 (1975); *Bowie Inn v. City of Bowie*, 274 Md. 230, 236, 335 A.2d 679 (1975).

In this case it is submitted that the "willful injury clause" is an arbitrary and unreasonable exercise of the legislative police power of the state in that the clause imposes workers compensation liability on an employer for injuries which are personal in nature and which bear no relationship to any risks associated with the worker's job.

II. Under the American System of Workers Compensation, An Employer is Not A General Insurer of Injuries Unrelated to the Work Place Which Befall a Worker, and Any Legislative Provision Which Requires that the Employer Become a General Insurer Constitutes an Unconstitutional Impairment of the Contractual Relationship Between Employer and Employee.

The social compact which underlies the American workers compensation system has been well set out in A. Larson, The Law of Workers' Compensation (1978) (hereinafter "Larson"] as follows:

> Worker's compensation is fundamentally different from strict tort liability in its basic test of liability, which is work connection rather than fault . . . Larson at §2.00.
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> * * * * * *
>
> The right to compensation depends on one simple test: Was there a work-connected injury? . . . Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The essence of applying the test is not a matter of assessing blame, but of marking boundaries. Larson at §2.10

* * * * * *

The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source of payment, the consumer of the product. . . Larson at §2.20

* * * * * *

Unlike pure social-insurance plans, the American compensation system does not place the cost on the "public" as such, but on a particular class of consumers, and thus retains a relation between the hazardousness of particular industries and the cost of the system to that industry and the consumers of its product. . . . Larson at §3.20

* * * * * *

The emphasis . . . on the features of compensation which distinguish it from tort, such as its social philosophy, its relation of awards to disability rather than loss, and its distribution of the cost to the consumer, may give the impression that the compensation system is virtually a kind of social security or social insurance plan. To restore a balanced impression of the American system, one must contrast it with the systems that are pure social insurance. This done, it becomes apparent that the present American system is neither tort nor "socialism" but something between. Larson at §3.10.

* * * * * *

> [Thus], [t]he American workers' compensation system is distinguishable from public social insurance in its essentially private nature, in the question of qualification for and measure of benefits, in the allocation of the burden of payment, in its retention of some relation between hazard and liability, and in its mechanism of unilateral employer liability. Larson at §3.00.

In short, the workers compensation laws under the American system represent a compact: From the employee's perspective, the compact stands for the proposition that, if an employee is injured as a result of something that occurs on the job, he or she will be compensated, regardless of fault, but according to established norms and will have no further recourse against the employer. From the employer's perspective, the compact stands for the proposition that, if the employee is shown to have been injured as a result of a workplace related injury, the employer will have to pay according to established norms, but will also be able to conduct its business without fear of additional litigation.[3] However, if the injury is not workplace related, the employer will not be held liable as a general insurer.

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3. See §9-509 of the Labor and Employment Article of the Maryland Code which provides that, once having been awarded workers compensation, an employee may not sue his or her employer under tort or other theory (unless the employee is injured or killed through the deliberate act of the employer).

In effect, the workers compensation compact described above operates as an essential element of every contract between employer and employee. Accordingly, a statutory provision, such as the "intentional injury clause," which attempts to undermine the workers compensation compact by effectively requiring that the employer become a general insurer of its employees, must be evaluated on constitutional grounds. The test for such evaluation is set forth in *General Motors Corporation v. Romein*, 503 U.S. at 186:

> Generally, we first ask whether the change in state law has "operated as a substantial impairment of a contractual relationship." Allied Structural Steel Co. v. Spans, 438 U.S. 234, 244, 98 S.Ct. 2716, 2722, 57 L.Ed.2d 727 (1978); Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411, 103 S.Ct. 697, 704, 74 L.Ed.2d 569 (1983). This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial.

In this case, it is submitted that all three tests are satisfied, thereby attesting to the impairment exacted by the "intentional injury clause." First, by virtue of the workers compensation compact, an employer is not an insurer of injuries which bear no relationship to the work place. Second, the "intentional injury clause" subverts this compact by requiring the employer to insure injuries or deaths that are motivated solely by the personal agenda of an assailant and which are directed against a worker for solely personal purposes. Third, the effect of the

"intentional injury clause" is substantial in that it affects every employer in the State of Maryland, and causes each to become a general insurer. As such, it is submitted that the "intentional injury clause" must be held constitutionally invalid as constituting an unwarranted and substantial impairment of contract.

III. For Workers Compensation to be Applicable, There Must be a Causal Relationship Between the Injury and the Fact of Employment, and, In the Absence of such a Relationship, the Imposition of Workers Compensation Benefits Constitutes an Unconstitutional Taking.

The lynchpin of the workers compensation compact is causality: For the injury to be compensable, it must in some tangible manner be related to the worker's employment. In this regard, virtually every state workers compensation statute contains causality words identical to the "arising out of and in the course of employment" clause or some close variation of that clause. See Larson at §6.10. As acknowledged by the Maryland Court of Appeals, of all the states, only Maryland is unique in its adoption of the "willful injury clause":

> Maryland's statute covering an award of compensation on behalf of an employee injured in the course of employment as a result of a willful or negligent act of a third party is unique. In most jurisdictions, the infliction of such injuries must, in addition to occurring in the course of employment, arise out of or because of the employment.

Edgewood Nursing Home v. Maxwell, 384 A. 2d at 750, 751 n. 3.

In its uniqueness, it is submitted that the "willful injury clause" exceeds the permissible realm of the due process clause in that it bears no reasonable relationship to the social compact underlying the American system of workers compensation. Rather, by requiring an employer to compensate an employee for injuries which are personal in nature and which bear no relationship to the employee's place of work other than the fact that the personal acts occurred at such place, the "willful injury clause" produces a constitutionally impermissible taking.

The law with respect to what constitutes an unconstitutional taking has been recently set out by this court in *Dolan v. City of Tigard*, __ U.S. __, 114 S. Ct. 2309, 129 L.Ed.2d 304 (1994). In that case, this court considered a City of Tigard municipal permitting requirement. As a condition for obtaining a building permit allowing expansion of the petitioner landowner's commercial property, the requirement obligated the landowner to dedicate portions of the property in question for improvement of a storm drainage system and a bicycle/pedestrian pathway. In evaluating the requirement, this court stated the basic constitutional principle as follows:

> The Takings Clause of the Fifth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, Chicago, B. & Q.R. Co. v. Chicago, 166 U.S. 226, 239, 17 S.Ct. 581, 585, 41 L.Ed. 979 (1897), provides: "[N]or

> shall private property be taken for public use, without just compensation." . . . One of the principal purposes of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960).

__ U.S. __, 114 S. Ct. at 2316.

Though, this case does not involve a physical taking of land, it is submitted that the taking that is involved is just as palpable as if land were involved. For, as observed by the *Dolan v. City of Tigard* court, one of the principal objectives of the taking clause is to prevent governments from unfairly imposing on certain citizens burdens which should be borne by the government as a whole. In complete contravention of the workers compensation compact and the decisional law of the State of Maryland and this court (see discussions which follow), the effect of the "willful injury" clause, as it applies in this case, is to impose on Maryland employers the obligation to become general insurers for injuries borne by their employees which bear no causal connection to the employer/employee relationship. In so imposing this obligation, the "willful injury clause" exacts a taking just as surely as if land occupied by such employers were being taken out from under their feet.

IV. Maryland Case Law is Consistent in Requiring a Causal Relationship Between Injury and Compensation.

With exception of *Edgewood Nursing Home v. Maxwell* and *Giant Food v. Gooch* (see note 1 supra and note 5 infra), the "willful injury clause" is alien to Maryland jurisprudence. Thus, under Maryland cases, an employee cannot receive workers compensation merely because he sustains an injury while performing routine duties at the job site. *Sargent v. Bd. of Educ.*, 49 Md. App. 577, 433 A.2d 1209 (1981). Indeed, an accidental injury must result from an unusual condition or occurrence in the employment. *Foble v. Knefely*, 176 Md. 474, 6 A.2d 48 (1939). Put differently, it is necessary that the injury arise within the time, space and boundaries of the employment and in the course of an activity whose purpose is related to the employment. *Wiley Mfg. Co. v. Wilson*, 280 Md. 200, 373 A.2d 613 (1977). The mere fact that an employee is injured while on the employer's premises does not necessarily mean that the employee was injured "in the course of" his or her employment. *Proctor-Silex Corp. v. DeBrick*, 253 Md. 477, 252 A.2d 800 (1969). Instead, there must be some connection between the part of the employer's property where the injury occurs and the employee's job duties. *Saylor v. Black and Decker Mfg. Co.*, 258 Md. 605, 267 A.2d 81 (1970).

Illustrative of the foregoing principles of Maryland workers compensation jurisprudence is the case of *Pariser Bakery v. Koontz*, 239 Md. 586, 212 A.2d. 324 (1965), There, the Respondent was denied compensation when, having just left his work at his employer's building, the Respondent was struck by an automobile being driven on a public sidewalk. The court stated that in order to show that the injuries arose out of his employment, the Respondent must establish a causal connection between the

conditions under which he worked and the ensuing injury. In concluding that no such causation existed, the court denied compensation, stating that to allow recovery under the facts of the case, would improperly "make the employer a general insurer of the health, safety and life of his employees." 239 Md. at 591.

V. A Causal Relationship Between Injury and Compensation Has Also Been an Indispensable Element of This Court's Workers Compensation Opinions.

This court, too, has had to grapple on more than one occasion with the bedrock principle that an employer is not a general insurer of the health and safety of its workers, and that a causative condition must exist before an injury can be imputed to an employee's place of work. In *Cudahy Packing Co. v. Parramore*, 263 U.S. 418 (1923), an employee was killed while crossing a public railway located on a public right of way near the employer's plant.

In defending against the claim for death benefits, the employer argued that the imposition of liability under these circumstances would violate the Fourteenth Amendment, based upon the argument that the employee was not injured while performing any services on behalf of the employer. Obviously dealing with a difficult fact pattern, this court, nevertheless, held the Utah statute in question was constitutional. However, in so holding, this court's reasoning established certain basic due process principles which clearly can not be satisfied by the "willful injury clause" of the Maryland statute.

First, this court stated the following as to the basic relationship that must exist before compensation may be considered:

> It may be assumed that where an accident is in no manner related to the employment [of the worker], an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution . . . . 263 U.S. at 422.

This court then evaluated the case on its merits to determine whether the relationship element was present. The court observed that the road on which the employee was killed constituted the only practical means of ingress and egress to the employer's plant. This road crossed three sets of railroad tracks. Because of these facts, the court stated that the accident bore a substantial relationship to the employee/employer relationship because the act of travelling to and from this plant exposed employees to a risk to which the general public was not exposed. Because of the facts of this case, in which the employee was required to repeatedly cross dangerous railroad crossings in order to perform his job, the court held that, on the facts before it, the requirement of causality was satisfied. In so holding, this court sounded the following precautionary note which distinguishes *Cudahy* from the case at bar:

> This is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection

> substantially contributory, though it need not be the sole or proximate cause. 263 U.S. at 418.

Of critical importance in *Cudahy* was the fact that the employment relationship exposed the employee to a peculiar risk to which the general public was not exposed and exposed the employee to this risk on a regular basis. Liability under these circumstances is consistent with well established workers' compensation law. See, in this regard, this court's synopsis of the critical element of the analogous Longshoremen's and Harbor Workers' Compensation Act provision in *U.S. Industries/Federal Sheet Metal, Inc. v. Director, Office of Workers' Compensation Programs, United States Department of Labor*, 455 U.S. 608 (1982):

> Injury is defined as an "accidental injury . . . arising out of and in the course of employment" 33 U.S.C. 902(2). Arising "out of" and "in the course of" employment are separate elements: the former refers to injury causation; the latter refers to the time, place, and circumstances of the injury. Not only must the injury have been caused by the employment, it also must have arisen during the employment. 455 U.S. at 615.

In contrast, in the present case, the Respondent was injured through a vengeful act perpetrated by a third party who had no relationship to the decedent's employer or to the circumstances of the decedent's job. The employer's premises served merely as the site of an incident which was premeditated and solely personal in nature. Such facts do not satisfy *Cudahy's* admonition that:

> [the employer's] liability is based, not upon any act or omission of the employer, but upon the existence of the relationship, which the employee bears to the employment because of and in the course of which he has been injured. 263 U.S. at 423.

VI. The Positional Risk Doctrine, as Sanctioned by This Court, Provides No Basis For Imposing the Burden of Workers Compensation on the Employer Where the Injury in Question Was Motivated by Personal Jealousies Unrelated to the Inherent Risks of the Work Place.

This court has dealt with circumstances where seemingly random events have been found to bear a strong enough relationship to the injured employee's employment so as to warrant workers compensation coverage. See, e.g., the "positional risk" cases of *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc. et al*, 380 U.S. 359 (1965); and *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965). However, never has this court approved as constitutionally defensible an opinion or statute such as the intentional injury clause provision now before this court where an injury or a death to a worker may be motivated by personal animus, totally unrelated to the injured or deceased employee's employment, and still be compensable. Yet, this is the very result sanctioned by the Maryland Court of Appeals in *Edgewood Nursing Home v. Maxwell*.

In *O'Leary v. Brown-Pacific-Maxon, Inc.*, this Court had to analyze a provision of the Longshoremen's and

Harbor Workers' Compensation Act, 33 U.S.C.A. §901 which, like the "arising out of and in the course of clause" of the Maryland statute," authorized compensation for "injury or death arising out of and in the course of employment." 340 U.S. at 506. The facts of *O'Leary v. Brown-Pacific-Maxon, Inc.* were as follows: The compensation award in the case was made on a claim arising from the accidental death of an employee of Brown-Pacific-Maxon, Inc., a government contractor operating on the island of Guam. Brown-Pacific maintained for its employees a recreation center near the shoreline, along which ran a channel so dangerous for swimmers that its use was forbidden and signs to that effect erected. John Valak, the employee, spent the afternoon at the center, and was waiting for his employer's bus to take him from the area when he saw or heard two men, standing on the reefs beyond the channel, signaling for help. Followed by nearly twenty others, he plunged in to effect a rescue. In attempting to swim the channel to reach the two men he was drowned.

On such facts, Justice Frankfurter speaking for the court, first noted that it was not "necessary that the employee be engaged at the time of the injury in [an] activity of benefit to his employer." 340 U.S. 507. However, he then went on to state that

> All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose. Ibid. A reasonable rescue attempt, like pursuit in aid of an officer making an arrest, may be 'one of the risks of the employment, an incident of the service,

foreseeable, if not foreseen, and so covered by the statute.' Id.

* * * * *

We hold only that rescue attempts such as that before us are not necessarily excluded from the coverage of the Act as the kind of conduct that employees engage in as frolics of their own. Id.

VII. Where the Positional Risk Analysis Has Been Extended to Injuries Caused by Third Parties, the Analysis Has Uniformly Required An Element of Fortuity, i.e., That the Risk in Question Be Actuated by A Random Source Without Any Specific Design on the Life of the Injured or Decedent Employee.

The "zone of danger" positional risk analysis of the Supreme Court in *O'Leary v. Brown-Pacific-Maxon, Inc.* Is closely akin to the analysis contained in the more common positional risk cases such as those where the fact of an employee's employment exposes him or her to risks such as stray bullets, unruly customers or roaming lunatics. In such cases, Larson defines the principle as follows: "An injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed the claimant in the position where he was injured." Larson at §6.50.

Instructive of the positional risk cases involving injuries precipitated by an unknown assailant is the District of Columbia case of *Maryland Casualty Co. v. Cardillo*, 107 F. 2d 959 (D.C. Cir. 1939). In *Cardillo*, an off-duty insurance premium collector, who was identified as such,

was assaulted and robbed . Under the then compensation statute in the District of Columbia, compensable injuries included those (i) arising out of and in the course of employment, as well as those (ii) caused by the "willful act of a third person directed against an employee because of his employment." In holding for the claimant, the Court of Appeals states at 162-63, "If a man's employment exposes him to special attack not only during working hours, but during certain off hours also, it is as socially desirable that the industry carry the off-hour risk as that it carry the working-hour risk."

Other courts have extended the positional risk doctrine to allow compensation whenever the injury occurred because the employment required the injured person to occupy what turned out to be a dangerous place See Larson, supra at 10. These cases involve what Larson refers to as "neutral risk," i.e., risk associated with a person's employment putting him or her in harm's way from an unknown and unexpected source. Id. at §9.50. For examples of cases allowing compensation where death or injury occurred as a result of a random bullet or an assault from a unknown third party, see, e.g., *Motion Control Indus. v. Workmen's Comp. Appeal Bd.*, 603 A.2d 675 (Pa. Commw. Ct. 1992) (death benefits allowed where decedent shot and killed in his employer's parking lot by an unknown third person where there was no evidence to indicate that the murder was a result of personal animosity); *Beck v. State*, 779 S.W.2d 367 (Tenn. 1989) (compensation permitted where employee attacked by an unknown stranger who was apparently agitated over employee's direction to him to move his vehicle); *Hall v. Feldman*, 262 App. Div. 979, 30 N.Y.S. 2d 70, *appeal*

denied, 287 N.Y. 854, 38 N.E. 2d 390 (1941) (compensation awarded for injury resulting from stray bullets in junkyard office); and *Entrocut v. Paramount Bakery & Restaurant*, 222 App. Div. 844, 226 N.Y. Supp 808 (1928)(mem) (compensation awarded for stray bullets resulting in injury in restaurant). However, with the possible exception of Louisiana[4], virtually no jurisdiction except for Maryland has awarded compensation based on the positional risk doctrine where the injury which occurred at the employee's place of work was driven by personal jealousies or vendettas as was true of the case at bar.

Instead, the positional risk doctrine has been routinely and universally held inapplicable where the employee's injury or death was intentionally inflicted out of personal design. Thus, compensation has been denied by the following jurisdictions under the circumstances indicated: Federal: *Dismuke v. Arkansas-Best Freight*

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4. Compare *Verrette v.* Ponchatoula, 464 So. 2d 392 (La. App. 1985) where death benefits were denied under circumstances where an employee working as a trash collector was shot dead on the job by the husband of a woman with whom the decedent had been conducting an affair with *Raybol v. Louisiana State*, 520 So. 2d 724 (1988) where compensation was granted under circumstances where the decedent was attacked at the dormitory where she worked by a former lover. See also *Pappas v. Marine Spill Response Corporation*, 650 So. 2d 441 (1995) where, in a "neutral risk" setting, the employee received compensation as a result of an attack by a stranger which occurred while the employee was attending a convention.

Systems, Inc., 346 F.2d 145 (6th Cir. 1965) (death benefits disallowed where employee murdered by a fellow worker who believed that the decedent had attempted to "frame" him); Alabama: *Jacobs v. Bowden Elec. Co.*, 601 So. 2d 1021 (Ala. Ct. App. 1992) (death benefits denied where decedent shot by his nephew while decedent was performing his job). Arizona: *Estate of Sims v. Industrial Comm'n*, 138 Ariz. 112, 673 P.2d 310 (Ct. App. 1983)(death benefits denied where employee at training session shot by mentally unbalanced brother -in-law); Arkansas: *Kendrick v. Peel*, 32 Ark. App. 29, 795 S.W.2d 365 (1990) (death benefits denied where murder of employee engendered by vendetta). California: *Transactron, Inc. v. Workers' Comp. App. Bd.*, 68 Cal. App. 3d 233, 137 Cal. Rptr. 142 (1977) (death benefits denied where jealous boyfriend sought out decedent and killed her in her place of employment as a receptionist); Connecticut: *Fair v. People's Sav. Bank*, 207 Conn. 535, 542 A.2d 1118 (1988) (death benefits denied where employee killed by her father during her exit interview); Florida: *Littles v. Osceola Farms Co.*, 577 So. 2d 657 (Fla. Dist. Ct. App. 1991) (death benefits denied where decedent killed by his estranged lover while he was staying in a medical complex recuperating from work-related injuries); Georgia: *Western Waterproofing Co., Inc.v. Rogers*, 204 Ga. App. 779, 420 S.E.2d 606 (1992), *cert. denied* (Jan. 7, 1993) (compensation denied where employee assaulted by employer's sales representative on company property during company hours); Idaho: *Duerock v. Acarregui*, 87 Idaho 24, 390 P.2d 55 (1964) (death benefits denied where employee murdered by her husband at the motel where she was employed); Illinois: *Schroeter v. Industrial Commission*, 62 Ill.2d 284, 342 N.E.2d 3

(1976) (compensation denied for employee assailed for personal reasons at his work site); Indiana: *Golden v. Inland Steel Co.*, 171 Ind. App. 233, 359 N.E.2d 252 (1977) (compensation denied for employee assaulted by a fellow employee in their employer's parking lot as a result of a traffic incident); Michigan: *Morris v. Soloway*, 170 Mich. App. 312, 428 N.W.2d 43 (1988) (compensation denied where employee dancer shot by a fellow employee for reasons arising from a personal dispute); Minnesota: *Dufloth v. City of Monticello*, 241 N.W.2d 645 (Minn. 1976) (compensation denied where employee injured by a third party who was motivated by personal animosity); Mississippi: *Dewberry v. Carter*, 218 So. 2d 27 (Miss. 1969) (death benefits denied where decedent shot at his place of employment by another acting for personal reasons); Missouri: *Freeman v. Callow*, 525 S.W.2d 371 (Mo. App. 1975) (compensation denied where employee service station attendant blinded by customer who accused the employee of carrying on an affair with the customer's wife); New Jersey: *Marky v. Dee Rose Furniture Co.*, 241 N.J. Super. 207, 574 A.2d 546, *cert. denied*, 122 N.J. 359, 585 A.2d 368 (1990) (death benefits denied where employee shot by former boyfriend who was jealous of employee and a coworker); New Mexico: *Gutierrez v. Artesia Pub. Schools*, 92 N.M. 112, 583 P.2d 476 (1978) (death benefits denied where decedent teacher killed on school grounds by the husband of a woman with whom decedent had sexual relations); New York: *Schlener v. American News Co.*, 240 N.Y. 622, 148 N.E. 732 (1925) (fight instigated by drunken friend of employee over a requested loan held to be noncompensable); Oregon: *Robinson v. Felts*, 23 Or. App. 126, 541 P.2d 506 (1975) (death benefits denied where employee killed at her place

of work by a jealous former lover); Tennessee: *White v. Whiteway Pharmacy, Inc.*, 210 Tenn. 449, 360 S.W.2d 12 (1962) (death benefits denied where decedent killed at the pharmacy where she was employed by husband who accused her of marital infidelity); and Texas: *Dallas Indep. School Dist. v. Porter*, 759 S.W.2d 454 (Tex. Ct. App. 1988) (death benefits denied where employee school janitor killed by a disgruntled grandparent over a non-school related incident relating to her grandchild).

Good cause exists for the nearly universal rejection of personally motivated injuries as a basis for invoking the positional risk doctrine. Indeed, in Maryland, prior to the advent of the "willful injury clause," an intentional injury precipitated for personal reasons by a third party intending to harm the employee would not have been compensable. See *Rice v. Revere Copper & Brass*, 186 Md. 561, 48 A.2d 166 (1946) where the court held that injuries resulting from a personal dispute which occurred on the employer's premises did not arise out of the employment of the Respondent.[5]

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5. In the same vein is the pre-statutory-change case of *Gray v. Department of Correction*, 230 Md. 508, 187 A. 2d 868 (1963). In *Gray*, benefits were denied to a prisoner where the injury in question probably occurred as a result of an assault by a fellow prisoner following a homosexual advance by the claimant. By comparison, see *Giant Food v. Gooch*, 245 Md. 160, 225 A.2d. 431 (1967), a case decided on the basis of the "willful injury clause," in which benefits were granted to an employee who was intentionally shot by a third person who mistakenly thought that the employee was the lover of the assailant's wife.

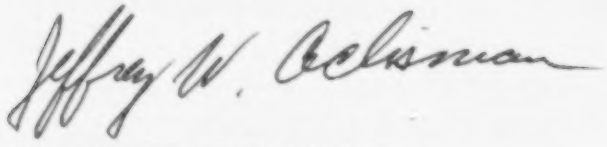
It is submitted that the state of the law as it existed in Maryland at the time of the *Rice* case was the only constitutionally defensible position available to the legislature of Maryland. For, to extend the positional risk doctrine in the manner contemplated by the "willful injury clause" causes the employer to be an absolute insurer of the well being of his or her employees even if injuries that befall the employee are purposeful, driven by the greed or jealousy of a third party and would not be compensable if they occurred a few feet away from the employer's premises. Such a system of universal coverage is totally alien to the American system of workers compensation. In addition, in imposing on employers a cost which is totally outside of the workers compensation compact, it is submitted that such a system also constitutes the abridgement of a fundamental liberty in violation of due process. See *Reno v. Flores*, 507 U.S. 292 (1993) (discussing due process claims in relation to violations of fundamental liberties). Even the courts of Maryland have rejected the notion that such a system of universal insurance is consistent with the Maryland workers compensation program. *Pariser Bakery v. Koontz*, 239 Md. 586, 212 Md. A.2d. (1965). This court, too, should recognize the constitutionally impermissible intrusiveness of the willful injury clause as applied in the present case.

CONCLUSION

For the reasons set forth above, this court should grant *certiorari* in this case.

DATED: August 2, 1996

Respectfully submitted,



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APPENDIX PAGE 1

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 858

September Term, 1995

ANGELICA NURSERIES, INC., *et al.*

v.

RONI F. CORADO-CERON

Wilner, C.J.,
Moylan,
Alpert,
JJ.

PER CURIAM

Filed: January 31, 1996

In this appeal, appellant[1] asks us to declare § 9-101 (b) (2) of the Workers' Compensation Act unconstitutional. That section includes within the definition of "accidental personal injury" an injury "caused by a willful or negligent act of a third person directed against a covered employee in the course of the employment of the covered employee."

FACTS

The facts of this case are undisputed. Appellee, Roni F. Corado-Ceron, was employed by appellant as a field laborer. On August 23, 1993, Ramon Rodrique-Quezada, the estranged boyfriend of appellee's sister, drove his truck onto appellant's field where appellee, his brother Carlos, and his supervisor, Tom Larrimore, were working.[2] Quezada motioned for Carlos to approach the truck; Carlos did not feel that he could leave the field and so he asked appellee if he would go instead. With his supervisor's permission, appellee approached Quezada's truck. As he approached, Quezada fired several shorts

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[1] There are two appellants -- Angelica Nurseries, Inc. and its insurer, Florists Mutual Insurance Co. We shall refer to them collectively as "appellant".

[2] Quezada has been previously employed by appellant but was fired approximately one year before the incident in this case occurred.

from the front seat of his truck and drove off, leaving appellee lying injured in the field.

Later that day, Quezada was arrested and charged with driving while intoxicated, assault and battery, and assault with intent to commit murder. He admitted to the arresting officer that he was very angry because his girlfriend was having an affair.

Appellee filed a claim for workers' compensation, alleging that he had sustained an accidental injury arising out of an in the course of his employment. A hearing was held before the Commission on May 24, 1994, on the following issues:

> "1. Did the employee sustain an accidental personal injury arising out of and in the course of his employment?
>
> 2. Is the disability of the employee the result of an accidental personal injury arising out of and in the course of employment?"

The Commission answered both questions in the affirmative and ordered appellant to pay appellee for his temporary total disability and medical expenses. Appellant's action for judicial review in the Circuit court for Kent County ended when the court granted appellee's cross-motion for summary judgement. This appeal ensued.

DISCUSSION

Appellant concedes that appellee's injuries constituted an "accidental personal injury" as set forth in § 9-101 (b) (2) of the Workers' Compensation Act and as interpreted by the relevant case law. Appellants claim, however, that the Act "constitutes an arbitrary, capricious, and unreasonable exercise of police power by the Maryland legislature" because, under the statute, employers are required to insure employees against injuries that are not causally connected with the employer/employee relationship. Appellants argue, therefore, that the Act violates the due process clause of the Fourteenth Amendment of the United States Constitution and Article 23 of the Maryland Declaration of Rights.

This is not the first time that the constitutionality of the Act has been challenged. In *Edgewood Nursing Home v. Maxwell,* 282 Md. 422, 426 (1978), the Court of Appeals explained that

> "[t]he Workmen's Compensation Act was passed in the exercise of the police power of the State to protect workers and their families from the hardships inflicted by work-related injuries. [Citations omitted.] Whether the exercise of that power violates the due process clause depends on whether the particular statute under consideration provides a real and substantial relation to

> the public health, morals, safety and welfare of the citizens of this State. [Citations omitted.] A large discretion is necessarily vested in the legislature to determine what the welfare of the public requires and what measures are necessary to promote it. [Citations omitted.] The wisdom of expediency of a law adopted in the exercise of the State's police power is not subject to judicial review and such a statute will not be held void if there are any considerations relating to the public welfare by which it can be supported. [Citations omitted.] In other words, to be able to find fault with a law is not to demonstrate its invalidity; it may seem unjust, yet be free from judicial interference."

The Court also noted that a statute enacted pursuant to the State's police power is presumed to be constitutional and that it was the burden of the party attacking the statute to prove beyond a reasonable doubt that it is unconstitutional. *Id.* at 427.

In *Edgewood,* Brenda Higgins, an employee of the Edgewood Nursing Home, was shot and killed by her estranged boyfriend while she was at work. A workers' compensation claim for dependency benefits was filed on behalf of Ms. Higgins infant daughter. The Commission found that Ms. Higgins's death was an "accidental personal

injury" and that her daughter was wholly dependent upon her.

The Court, in holding that the Act was constitutional, concluded that an injury inflicted by the wilful or negligent act of a third party is work-related if "it occurred within the course of employment on the employer's premises at a time when the employee was obliged to be present and at work." *Edgewood,* 282 Md. at 430.

Appellants recognize that the Court of Appeals has spoken on this issue but asks us to find that *Edgewood* was decided wrongly. We are not authorized to do so. If the ruling in *Edgewood* is wrong, the Court of Appeals is the tribunal that must declare it so. If there is to be a change in the statute, it must be done by the Legislature.

The only question that remains in this case is whether the necessary nexus existed, that is, whether appellee's injuries occurred within the course of his employment and on the employer's premises at a time when he was obligated to be there. We find that the necessary nexus did exist. Accordingly, the trial court did not error in granting the cross-motion for summary judgement.

JUDGEMENT AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.

IN THE CIRCUIT COURT FOR KENT COUNTY, MARYLAND

ANGELICA NURSERIES, INC.	*	
Appellant/Employer	*	Case No.:
and	*	CV-2825-L
FLORISTS MUTUAL	*	Appeal for
INSURANCE COMPANY	*	Workers'
Appellant/Employer	*	Compensation
v.	*	Commission
RONI F. CORADO-CERON	*	Claim No.
Appellee/Claimant	*	B 299931

****

ORDER

Upon consideration of the Claimant's Answer to the employer and insurer's Motion for Summary Judgement and Claimant's Cross-Motion for Summary Judgement and Memorandum in support thereof, it is this 25th day of April, 1995,

ORDERED, by the Circuit Court for Kent County, that the Claimant's Cross-Motion for Summary Judgement is GRANTED, and the decision of the Workers' Compensation Commission is confirmed.

_____

JUDGE, Circuit Court for
Kent County, Maryland

WORKERS' COMPENSATION COMMISSION
6 NORTH LIBERTY STREET
BALTIMORE, MARYLAND 21201-3785

CLAIM NO B299931 AWARD OF COMPENSATION
CLAIMANT RONI F. CORADO-CERON
EMPLOYER ANGELICA NURSERIES INC.
INSURER FLORISTS MUTUAL INSURANCE CO.

Hearing was held in the above claim at Centreville, Maryland on May 24, 1994, on the following issues:

1. Did the employee sustain an accidental personal injury arising out of and in the course of employment?
2. Is the disability of the employee the result of an accidental personal injury arising out of and in the course of employment?

The Commission finds on the issues presented that the claimant sustained an accidental injury arising out of and in the course of employment on August 23, 1993; and finds that the disability of the claimant is the result of the aforesaid accidental injury; and that as a result thereof the claimant was temporarily totally disabled from August 23, 1993 to date and continuing. The Commission further finds that the employer and insurer shall pay medical expenses in accordance with the Medical Fee Guide of this Commission. Average weekly wage - $255.45.

It is therefore, this 17th day of JUNE, 1994, by the Workers' Compensation Commission ORDERED that the above-named employer and above-named insurer pay unto

the above-named claimant, compensation for temporary total disability at the rate of $171.00, payable weekly, beginning August 23, 1993 to date and continuing; and pay medical expenses in accordance with the Medical Fee Guide of this Commission.

It is further ORDERED that from the final weeks of compensation due and owing, the following fee be paid: Herbert J. Arnold, Esquire, in the amount of $516.42; and further

ORDERED that in accordance with Section 9-621, Labor and Employment Article, the Claimant is ordered to immediately notify the above-named Employer and Insurer regarding any work related activity or any return to work; subject to the provisions of the Workers' Compensation Law of Maryland.

G. JOSEPH SILLS, JR.
COMMISSIONER

ATTEST
LOURENNA E. FISHER
SECRETARY

JEFFREY W. OCHSMAN, ESQ.
SUITE 700
1101 17TH STREET NW
WASHINGTON, DC 200364704

ANGELICA NURSERIES, INC. et al.	*	In the Court of Appeals of Maryland
v.	*	Petition Docket No. 27, Sept. Term 1996
RONI F. CORADO-CERON	*	(No. 858, Sept. Term 1995, Court of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: June 6, 1996

§ 9-101. Definitions

(a) *In general* - In this title the following words have the meanings indicated.

(b) *Accidental personal injury* - "Accidental personal injury" means:

(1) an accidental injury that arises out of and in the course of employment;

(2) an injury caused by a willful or negligent act of a third person directed against a covered employee in the course of the employment of the covered employee; or

(3) a disease or infection that naturally results from an accidental injury that arises out of and in the course of employment, including:

(I) an occupational disease; and

(ii) frostbite or sunstroke caused by a weather condition.

ANGELICA NURSERIES, INC., *et al.*	*	IN THE
	*	COURT OF
	*	APPEALS OF
v.	*	MARYLAND
	*	MISC. NO.
RONI F. CORADO-CERONE RESPONDENT	*	

Petition for a Writ of Certiorari to the Court of Special Appeals

Petitioners, Angelica Nurseries, Inc. and Florists Mutual Insurance Company, request this Court to issue a writ of certiorari.

THE CASE IN THE LOWER COURT

The case in the lower court was designated *Angelica Nurseries, Inc., Employer, and Florists Mutual Insurance Company, Insurer v. Roni F. Corado-Ceron, Claimant*, Case No. CV-2825-L, Circuit Court for Kent County, Maryland.

DECISION BY COURT OF SPECIAL APPEALS

The case has been decided by the Court of Special Appeals (Exhibit A).

E. THIS APPLICATION OF MARYLAND LAW VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AS WELL AS THE MARYLAND STATE CONSTITUTION.

This provision of the Maryland Workers' Compensation Act, which makes an employer responsible for harm suffered by an employee, which is unrelated to the employer/employee relationship constitutes an arbitrary, capricious, and unreasonable exercise of police power by the Maryland legislature. Accordingly, this provision of the Maryland Workers' Compensation Act violates the due process clause of the Fourteenth Amendment of the United States Constitution, in addition to Article 24 of the Maryland Declaration of Rights.

Under the due process clause of the Fourteenth Amendment, regulation exercised pursuant to police power may be justified if based upon reasonable considerations affecting public welfare. *See, e.g.*, *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488 (1955). Although Article 24 of the Maryland Declaration of Rights has sometimes been equated with the due process clause for the Fourteenth Amendment, the two are not synonymous. Article 24 of the Maryland Declaration of Rights requires a stronger legislative justification, in that a defendant must

show a "real and substantial relationship" between the object sought to be obtained and the legislation in question. *Maryland Board of Pharmaceuticals v. Sav-A-Lot*, 311 A.2d 242 (1973).

While a party may not challenge the wisdom or expediency of a law, one may challenge its constitutionality. An exercise of police power may not be sustained if exercised arbitrarily, oppressively or unreasonably. *See, e.g., Maryland Board of Pharmaceuticals v. Sav-A-Lot*, 311 A.2d 241 (1973); *Burley v City of Annapolis*, 34 A.2d 603 (1943); *Northwest Merchants Terminal v. O'Rourke*, 60 A.2d 743 (1948). If a statute purporting to have been enacted to protect the public health, morals, safety and welfare has no real or substantial relation to those objects or is a palpable invasion of rights secured by fundamental law, it is the court's duty to so adjudge and thereby give effect to the Constitution. *Maryland State Bd. of Barber Exmrs. v. Kuhn*, 270 Md. 496, 312 A.2d 216 (1973).

The liability sought to be imposed in this case constitutes an arbitrary and oppressive exercise of the Maryland police power, in that it seeks to hold an employer liable for harm suffered by an employee where the origin of that harm bears no relationship whatsoever to the employment contract. In virtually every jurisdiction in the United States, as well as in the remainder of the Maryland Workers' Compensation law, this causal

connection is established by requiring that an injury "arise out of" the employment relationship.

This requirement of a causal connection between the employee's harm and the employment relationship was clearly established as a constitutional prerequisite in the case of *Cudahy Packing Co. v. Parramore*, 263 U.S. 418 (1923). In *Cudahy*, an employee was killed while crossing a public railway while off the employer's premises but near the employer's plant. The road on which the employee was traveling was very close to the employer's plant, and according to the Supreme Court constituted the only practical means of ingress and egress for the employees of the plant. In defending against this claim, the employer argued that the imposition of liability under these circumstances would violate the Fourteenth Amendment, based upon the argument that the employee was not injured while performing any services on behalf of the employer. The court held the Utah statute in question constitutional, but the reasoning of the Supreme Court is of critical importance to the present case. The court stated that the constitutionality of this statute must be construed in accordance with the facts of the case. As stated, the road on which the employee was killed constituted the only practical means of ingress and egress to the employer's plant. This road crossed three sets of railroad tracks. Because of this the court stated that the accident bore a substantial relationship to the employee/employer relationship because the act of traveling to and from this plant exposed employees to a risk to which the general

public was not exposed. In reaching this outcome, the court stated, "It may be assumed that where an accident is in no manner related to the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution." (Emphasis added). Because of the facts of this case, in which the employee was required to repeatedly cross dangerous railroad crossings in order to perform his job, the court held that this particular risk met the test of constitutionality. The Supreme Court further qualified its holding by stating:

> This is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection substantially contributory, though it need not be the sole or proximate cause.

In comparing the facts of the present case with the facts of *Cudahy*, the contrast is readily apparent. Of critical importance in *Cudahy* was the fact that the employment relationship exposed the employee to a peculiar risk to which the general public was not exposed and exposed the employee to this risk on a regular basis. Liability under these circumstances is consistent with well established workers' compensation law. In contrast, in the

present case, the Respondent was injured through a single, unanticipated and random act of violence. This act of violence was motivated by purely personal reasons, and was not related in any way to the Respondent's employment circumstances. The employer's premises served merely as the site of the incident. The Supreme Court in *Cudahy* stated that "[the employer's] liability is based, not upon any act or omission of the employer, but upon the existence of the relationship, which the employee bears to the employment because of and in the course of which he has been injured." Because there is no causal connection in this case between the Respondent's injuries and the business in which the employer employed the Respondent, which substantially contributed to the Respondent's injuries, the imposition of liability in this case cannot meet the test of constitutionality established in *Cudahy*. In other words, the Supreme Court in *Cudahy* ultimately held that the Respondent's injuries arose out of his employment. In the present case, the Respondent's injuries did not arise out of his employment, *see*, Subsection IVB, *supra*, and the Respondent seeks to hold the employer liable under a statute which explicitly provides for compensation when an injury does not arise out of the Respondent's employment.

The Maryland court has addressed this question of constitutionality in *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 384 A.2d 748 (1978). However, the reasoning of the *Edgewood* case is faulty and cannot withstand scrutiny. In *Edgewood*, the deceased employee

was shot by an "estranged paramour" while at work. The employer defended upon the grounds that compensability in this case would violate the due process clause of the Fourteenth Amendment. In reaching this decision, the court in *Edgewood* acknowledged that Maryland law was "unique" in this respect, and unlike the law of any other jurisdiction. The court then stated that this legislative act constituted an exercise of police power, which was entitled to a presumption of constitutionality in which would be sustained if supported by policy considerations. The court also reviewed the *Cudahy* decision, discussed above, focusing on that language of the opinion which cautioned against voiding the state statute when the employment relationship contributed to the Respondent's harm in some way.

At this point, the rationale of *Edgewood* breaks down. The court stated that the employer's obligation did rest on the employer/employee relationship because the employee was injured in the course of his employment. The court further stated that the injuries were work related in that even though they arose for personal reasons not attributable to the working environment, they occurred on the employer's premises at a time when the employee was obliged to be present. In view of this "nexus" the court held that the statute was constitutional.

The cornerstone of the court's decision in this case was its finding that the Respondent's injuries were work-related even though they arose for personal relations not

attributable to the working environment. This reasoning is paradoxical, in that under Maryland law, a work related injury is defined as one which arises out of the employment relationship. That aspect of the Maryland Workers' Compensation Act in question which distinguishes it from the rest of Maryland Workers' Compensation law, as well as all other workers' compensation law, is the fact that it calls for compensation in cases where an injury occurs in the course of employment but does not arise out of the employment. By definition, such injury cannot be considered a work-related injury. In essence, the court in *Edgewood* held that the deceased employee's injuries were work-related, even though they were not work-related, simply because they occurred on the employer's premises. Maryland workers' compensation has established a line of cases which define when an injury arises out of the employer/employee relationship. An injury which occurs in the course of employment without arising out of employment is admittedly not work-related. That is the type of injury for which the Maryland Act specifically calls for compensation in the case of intentional torts, and which is at issue in this case.

To impose liability on an employer for injuries sustained as the result of an intentional attack on the employee, for reasons completely and admittedly unrelated to the Respondent's employment, simply because the attack occurred on the employer's premises and without a finding that the employer or employment contributed to the same

in any way, is the essence of an arbitrary and oppressive exercise of the legislative police power by the State. To say that the liability in this case rests upon the employment relationship, as the court found in *Edgewood*, is to disregard an entire body of established Maryland law, which establishes when an injury does or does not arise out of an employment relationship. To state that a causal relationship exists simply because the employee was required to be on the employer's premises at that time is arbitrary and unreasonable.

If a litigant, juror, judge or attorney, was required to be in court on a given day and was assaulted while in the courthouse by a third-party for personal reasons, it would be considered absurd reasoning to assert that the harm experienced by the injured party rested upon the relationship between that party and the court. The same reasoning would apply for any party assaulted while in school, in prison, or at any other location where that party was required to be at the time that the assault occurred. The court will not hesitate to strike down any statute which imposed unconditional liability upon the owner of the premises simply for owning the premises where an assault occurred as arbitrary and oppressive. For the Maryland legislature to extend this type of liability upon Maryland employers, simply because Maryland Workers Compensation Act provides for liability in cases where an employee's injuries are related to the employer/employee relationship, is equally arbitrary and oppressive and should not continue to be upheld.

This Court decided the *Edgewood Nursing Home v. Maxwell* case almost 20 years ago. In that case, this Court stated:

> the wisdom or expediency of a law adopted in the exercise of the state's police power is not subject to judicial review and such a statute will not be held void if there are any considerations relating to the public welfare by which it can be supported [citations]. In other words, to be able to find fault with the law is not to demonstrate its invalidity; it may be unjust, yet be free from judicial interference.

See Edgewood Nursing Home v. Maxwell, 282 Md. 422, 384 A.2d 748 at 751 (1978); *Matter of Trader*, 272 Md. 364, 325 A.2d 398 (1974). Society has changed dramatically since this Court issued its ruling in *Edgewood* in 1978. One needs only to look at the headlines in the daily newspaper to be reminded of the extent to which violence which has permeated all levels of our society, including the work environment. It is now the appropriate time for this Court to reconsider its decision in the *Edgewood* case. To have the Maryland Workers' Compensation statute applied to transform Maryland employers into virtual guarantors of their employee's safety, even from the willful actions of third parties which had nothing to do whatsoever with the employer/employee relationship seems on its face to be oppressive and unreasonable. While the rationale for this Court's ruling

in *Edgewood Nursing Home v. Maxwell* may have been sound back in 1978, the facts of this case currently show the desperate need to reconsider the holding in that case. The result of the application of Section 9-101(b)(2) of the Maryland Workers' Compensation Act is not only unjust in circumstances such as these, but it rises to the level of being unreasonable and oppressive given the trends of modern day life. As such, this Court should re-examine this issue to see whether or not application of this section of the Workers' Compensation Act, given the unique facts of this case, amounts to a violation of the due process rights of the petitioners in contravention of both the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights. The situation in which the Petitioners find themselves, through no fault of their own, is the end result of a law which is not only unjust, but applied to its logical extreme in this case, certainly can be described as arbitrary, unreasonable and oppressive. Consequently, this Court has a duty to give effect to the Constitution and find that, in this case, Section 9-101(b)(2) of the Maryland Workers' Compensation Act is unconstitutional.

CONCLUSION

WHEREFORE, the Petitioners, Angelica Nurseries, Inc. and Florists' Mutual Insurance Company request that this Court issue its writ of certiorari to the Court of Special Appeals of Maryland so that this case can be certified to this Court for review and determination.

Respectfully submitted,

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